Part 530 – Working Lands Conservation Programs Manual

Subpart I – Contract Violations

530.80 General

A. This subpart provides policy for handling contract violations, canceling or terminating contracts, recovery of costs, assessment of liquidated damages, and debt collection.

B. States should work with participants to manage contracts, including taking appropriate action to modify contracts before the participant becomes noncompliant. Refer to subpart G, "Modifications," of this manual for additional guidance.

C. Contract violations may also be referred to as "noncompliance." Contract violations occur when a participant fails to adhere to the terms and conditions of the contract.

D. When NRCS determines that a participant has violated the contract terms, NRCS must provide a reasonable time not to exceed 12 months, as determined by the State conservationist, for the participant to correct the violation or face contract termination. If the nature of the violation does not allow for a reasonable time to regain compliance, NRCS may immediately terminate the contract.

Note: NRCS allows more flexibility in resolving issues that arise as a result of circumstances beyond the participant's control as described in section 530.82, below.

E. Noncompliance may include, but is not limited to, the following situations:

(1) The participant fails to complete conservation practices or activities as scheduled in the contract.
(2) The participant loses control of land under contract.
(3) A conservation practice or activity fails within its lifespan and prior to contract expiration.
(4) The participant fails to meet other contract provisions outlined in the contract appendix.

F. States must develop protocols to ensure consistent and equitable handling of noncompliance situations.

530.81 Documenting Noncompliance

A. NRCS must review the circumstances related to the noncompliance to determine appropriate course of action.

B. The NRCS field office must complete a contract status review using Form NRCS-CPA-13, "Contract Review." Refer to subpart H, section 530.71D, "Annual Contract Reviews," of this manual.

C. States may use subpart O, exhibit 530.143J, "Noncompliance Flowchart," of this manual to assist them in determining how to proceed once they identify that a contract is in noncompliance.

530.82 Addressing Noncompliance and Violations

A. NRCS may handle noncompliance situations either with or without completing Form NRCS-CPA-153, "Agreement Covering Non-compliance with the Provisions of Conservation Program Contract (CPC)," depending on the specific circumstances of the noncompliance as described below.

B. Without Form NRCS-CPA-153 for circumstances beyond the participant's control.

(1) Circumstances beyond the participant's control may include—
  (i) Natural disasters.
  (ii) Involuntary loss of land included in the contract.
  (iii) Lack of timely technical assistance or conservation practice or activity designs.
  (iv) Other hardship not present at the time of contract enrollment.

(2) When NRCS determines that noncompliance is a result of circumstances beyond the participant's control, the field office will work with the participant to find a remedy that allows for contract modification or cancellation. In these situations, NRCS may—
  (i) Modify the contract to bring the contract back into compliance including rescheduling planned contract items as necessary.

  Note: When contract items are 1 year or less behind schedule (due to circumstances beyond the participant's control), it is not necessary to reschedule the items if the participant will complete them within the next year. In these cases, the field office may use subpart O, exhibit 530.141G, "Annual Schedule of Operations Letter," of this manual, along with a copy of Form NRCS-CPA-13, to inform producers of the practices behind schedule.

  Note: It may be necessary for the field office to reschedule other contract items that are not currently behind schedule in order to help the participant remain in compliance going forward.

  (ii) Modify the contract to reapply a failed practice. Refer to subpart G, section 530.64, "Reapplication of Failed Conservation Treatment," of this manual.
  (iii) Cancel the contract without cost recovery. Refer to section 530.84, "Cancellation and Termination of Contracts," below.

(3) The field office must thoroughly document the specific circumstances and planned corrective action in the participant case file.

C. With Form NRCS-CPA-153 or through written notification

(1) Except for the circumstance identified above in section 530.82B, the field office must document contract violations using Form NRCS-CPA-153, or through written notification, and reschedule applicable contract items through a modification.

  Note: Completing Form NRCS-CPA-153 identifies the corrective actions and the consequences for failing to remedy the violation, so rescheduling contract items to reflect the current contract status does not in itself bring the contract back into compliance. The contract remains out of compliance until the participant completes the rescheduled items, resolving the terms of the NRCS-CPA-153.

(2) NRCS must document the—
  (i) Specific basis for the noncompliance.
  (ii) Action(s) needed for the participant to regain compliance.
  (iii) Timeframe to complete the corrective action(s), not to exceed 1 year.
  (iv) Consequences for failing to remedy the violation.

(3) The NRCS approving official and the participant(s) must sign Form NRCS-CPA-153. If used, the NRCS approving official must sign any written notification. NRCS will provide a copy of the signed form to the participant and retain in the case file.

(4) If the participant cannot or will not complete the corrective actions as agreed to on Form NRCS-CPA-153 or as detailed in other written documentation, follow the policy below in section 530.84, "Cancellation and Termination of Contracts," unless (5) below applies.

(5) The State conservationist may waive the term of the initial Form NRCS-CPA-153 by issuing a new Form NRCS-CPA-153 to extend the terms of a previously approved Form NRCS-

CPA-153 for up to 1 additional year only if the participant has made a good faith effort to comply with the terms of the Form NRCS-CPA-153 but has been unable to complete the corrective actions within the agreed-to timeframe due to circumstances beyond the participant's control. The State conservationist cannot further delegate extension of a Form NRCS-CPA-153 for an additional year. Refer to subpart O, exhibit 530.143N, "Delegation of Authority," of this manual.

530.83 Other Violations

A. Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Violations

(1) When the Farm Service Agency (FSA) makes a determination that a participant is ineligible due to an HELC or WC violation during the course of a conservation program contract, NRCS must complete Form NRCS-CPA-153 and provide the participant a reasonable time, not to exceed 1 year, to regain eligibility.
(2) If the participant requests good faith relief from FSA, the participant should continue to implement all NRCS contract items as planned, but NRCS must not issue payments while the participant remains ineligible.
(3) If FSA grants good faith relief, the participant may be entitled to receive payment for contract items completed during the period of ineligibility.
(4) If FSA does not grant good faith relief, the participant is ineligible to receive payments for contract items implemented during the period of ineligibility, regardless of whether they regain eligibility in accordance with an approved Form NRCS-CPA-153.
(5) NRCS must terminate the contract in accordance with section 530.84C, below, if the participant fails to complete the agreed-to corrective action outlined in an approved Form NRCS-CPA-153.

B. Misrepresentation, Scheme, or Device

(1) The participant is not entitled to receive payments, or any other benefits made under the contract, if NRCS determines that a participant has—
  (i) Erroneously represented any fact affecting a program determination with respect to the contract or the applicable program regulations,
  (ii) Adopted any scheme or device which tends to defeat the purposes of the program or contract,
  (iii) Made any fraudulent representation with respect to the program or contract,
  (iv) Adopted any scheme or device for depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program, or
  (v) Made changes to the operation for the sole purpose of working around payment or contract limitations.
(2) Once NRCS determines misrepresentation, scheme, or device, the State conservationist will terminate the contract and require that the participant refund all payments received under the contract and pay applicable liquidated damages, in accordance with the provisions of the applicable contract appendix and program regulation.
(3) In cases where NRCS suspects a participant has committed misrepresentation, scheme, or device, the State conservationist may request an investigation by the USDA Office of Inspector General (OIG).
  (i) The State conservationist must submit a detailed written explanation along with the findings of fact and supporting evidence to the regional conservationist and the appropriate deputy chief for concurrence.
  (ii) The State conservationist may consult OIG, the Office of General Counsel, or both, in making the determination.

(iii) The Chief will make the final determination.

Note: NRCS must not disclose information concerning the existence of an ongoing OIG investigation unless OIG has notified NRCS in writing that NRCS may confirm the existence of an ongoing investigation, or information provided. Any publicity about the allegations OIG is investigating, or even about the existence of a planned investigation, may interfere with the inquiry or with necessary legal, administrative, contractual, or personnel actions.

Note: NRCS must not terminate or take other administrative action on a contract while it is under investigation.

(4) Participants may still be subject to applicable civil or criminal fraud statutes, including suspension and debarment.

C. Nonprocurement Suspension and Debarment List

(1) Conservation program contract violations so serious as to affect the integrity of the agency may serve as the basis for a suspension and debarment action by NRCS. The State conservationist will provide documentation to the Chief for a suspension and debarment determination when warranted.

(2) The System for Award Management website (https://www.sam.gov), otherwise known as SAM.gov, is the official notification site of suspension and debarment. Until the involved agency files the official paperwork, secures the suspension from the agency, and the action appears in SAM.gov, NRCS does not have enough legal basis to stop processing applications, contracts, or payment related to contracts other than the application or contract under which the scheme or device occurred. SAM.gov lists suspended agreements under the "excluded" search. Because these instances are rare, States should contact National Headquarters for guidance in these matters.

530.84 Cancellation and Termination of Contracts

A. Cancellations and Terminations

(1) A contract may be either canceled by agreement of both parties or terminated for cause by NRCS. Once canceled or terminated, neither NRCS nor the participant has any further responsibilities under the contract and the participant forfeits all rights to any additional payments as described in the contract appendix.

(2) Cancellations and terminations are effective once the NRCS approving official signs the cancellation or termination letter, regardless of whether the agency completes the cancellation or termination within the applicable business tool.

(3) NRCS may not approve payments after canceling or terminating the contract, except for extreme or rare occurrences. Follow the process outlined in subpart F, section 530.52H, "Special Payments," of this manual.

B. Cancellation.—An equitable remedy that allows NRCS and the participant(s) to mutually end the contractual relationship.

(1) Participants must request a contract cancellation in writing, provide reasons for the cancellation, and, if applicable, provide information on any new producer willing to assume the contract.

(i) For situations where a participant is deceased or becomes incapacitated and no eligible successor is identified within the required timeframe, NRCS will cancel the contract. Refer to subpart F, section 530.52G, "Payments to Deceased and Incapacitated Participants," of this manual.

(ii) When the basis for a cancellation request is hardship related, NRCS may request documentation from the participant to substantiate that the hardship is new or worsened after contract obligation.

(2) Cost recovery of payments previously made may or may not be appropriate, depending upon the circumstances.

C. Termination.—NRCS unilaterally ends the contractual agreement as a result of a material breach of the terms and conditions of the contract.

(1) Prior to initiating a contract termination, NRCS must provide participants an opportunity to remedy the violation, when applicable, as required by the specific program regulation. Refer above to section 530.80, "General."

(2) NRCS will usually seek cost recovery of payments previously made and assess liquidated damages. Refer to section 530.85, "Recovery of Costs and Liquidated Damages," below.

(3) Contract terminations meet the definition of an adverse action in accordance with 7 CFR Section 11.1, "National Appeals Division Rules of Procedure." Refer to section 530.88, "Equitable Relief, Appeals, and Mediation," below.

D. NRCS Decision and Participant Notification

The State conservationist, or designee, makes the decision and if approved—

(i) Notifies the participant in writing of the decision, identifies any associated cost recovery or liquidated damages, and provides applicable appeal rights. Refer to subpart O, exhibits 530.141M, "Cancellation without Cost Recovery Letter," 530.141N, "Cancellation with Cost Recovery Letter," or 530.141O, "Termination with Cost Recovery Letter," of this manual.

Note: Mutually approved cancellation actions where NRCS has waived cost recovery is not an adverse action and does not require providing any appeal rights.

Note: NRCS does not assess liquidated damages for a contract cancellation.

(ii) Approves the cancellation or termination modification in the applicable business tool.

530.85 Recovery of Costs and Liquidated Damages

A. Applicability of Cost Recovery of Program Payments

(1) NRCS may seek recovery of all or part of the financial assistance paid to a participant in accordance with the provisions of the contract appendix and applicable program regulations when a contract is either terminated or canceled.

(2) State conservationists have discretion on the amount of cost recovery sought, including waiving 100 percent of the cost recovery if justified by the unique circumstances of the specific contract. State conservationists must consider all the following when determining the applicability and amount of cost recovery:

(i) Whether the previously installed conservation practices and activities can function independently

(ii) Whether the previously installed conservation practices and activities will be affected by the violation or the absence of other conservation practices or activities that would have been installed under the contract

(iii) Whether the participant agrees to operate and maintain the installed conservation practices and activities for their lifespan

(iv) The participant's good faith effort to comply with the terms of the contract.

(3) NRCS must address these considerations in the notification letter to the participant.

B. Liquidated Damages

(1) "Liquidated damages" means a sum of money as stipulated in the contract appendix that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract.
(2) With respect to a terminated contract, State conservationists must assess liquidated damages at a rate of 10 percent of the total financial assistance funds obligated, excluding any technical assistance funds obligated, as allowed by applicable program regulations.
(3) The State conservationist may waive liquidated damages at their discretion in accordance with the applicable program regulation. States must apply decisions to waive liquidated damages consistently.

C. Other Considerations

(1) The State conservationist should consider waiving cost recovery or liquidated damage assessments that total $1,000 or less as being in the public interest.
(2) The State conservationist may only consider waiving or reducing cost recovery for payments that NRCS properly made.
(3) The facts in the specific contract case file must support the State conservationist's decision to request cost recovery or assess liquidated damages and must also be fully supported by, and documented separately in, the participant notification letter. Refer to 440-CPM, Part 510, "Appeals and Mediation," for more guidance.
(4) Any improper payment is subject to debt collection, and the State conservationist cannot cancel a debt except as described below in section 530.86G, "Handling of Small Debts." NRCS must provide appeal rights when seeking collection of improper payments. Refer to section 530.88 below.
(5) The State conservationist may determine if equitable relief is appropriate. Participants may request, or NRCS may initiate on the participant's behalf, equitable relief in accordance with the equitable relief provisions found in 7 CFR Part 635.
(6) State program staff must work with the State financial resource specialist and submit a copy of the notification letter to the appropriate Farm Production and Conservation (FPAC) Business Center (BC) team when the letter is mailed to the participant. Interest begins to accrue on the total amount of cost recovery and liquidated damages if the participant does not pay the amount requested within 30 days. Interest continues to accrue until the agency receives payment in full or the debt is otherwise canceled.

D. Disposition of Recoveries

When a participant repays program payments, contract management business tools do not account for this, so NRCS must use case file documentation when evaluating future payment limitation issues or other program eligibility requirements.

530.86 Claims, Debt Collections, and Offsets

A. Collection of Debts

NRCS will follow procedures of the Debt Collection Improvement Act of 1996 (DCIA) to collect amounts due from agency-administered contracts, including cost recovery, assessment of liquidated damages, or collection of other debts such as improper payments. 7 CFR Part 3 authorizes debt settlement policies and procedures. NRCS will send the initial program notification letter to participants, identifying the contract number, amount owed, and reason for collecting these funds. Refer to subpart O, exhibits 530.141H, "Debt Collection Letter;" 530.141N, "Cancellation with Cost Recovery Letter;" or 530.141O, "Termination with Cost Recovery Letter," of this manual. The State conservationist or Chief may cancel debts in certain

limited circumstances—refer to paragraph G, below. Federal claims collections standards require aggressive agency collection activity.

B. Receivables

NRCS must provide a copy of the notification letter and all required supporting documentation to the applicable FPAC BC team when the letter is mailed to the participant.

C. Debt Collection and Interest

Collection of amounts due will follow DCIA procedures and will accrue interest at the current value of funds rate published in the Federal Register by the U.S. Government.

D. Appeals

(1) When a participant appeals an NRCS decision that includes cost recovery or assessment of liquidated damages, the State program staff must work with the State financial resources specialist to place a hold on the debt collection.

Note: Placing the debt on hold does not prevent accrual of interest on the debt.

(2) If the NRCS decision is upheld on appeal, NRCS must remove the hold on the debt and collection procedures resume.

(3) If the NRCS decision is overturned on appeal, NRCS must cancel both the debt and any accrued interest associated with the debt.

E. Commodity Credit Corporation (CCC) Debt Register

If a participant receiving a payment is on the CCC debt register but the National Finance Center (NFC) has yet to submit the indebtedness to Treasury Offset Program (TOP), the only option to offset the payment is to use Form CCC-36, "Assignment of Payment." In this circumstance, the participant will assign his or her payment to the applicable USDA agency. The CCC debt register allows payments to be offset for other USDA agency debt when NRCS sends the initial notification letter.

F. Offsets to Payments Made by the U.S. Department of the Treasury (Treasury Department)

If a participant receiving a payment is indebted to another Federal agency (for example, IRS) or USDA, and the DCIA collection procedures resulted in a debt being referred to TOP, the Treasury Department will reduce the compensation due the participant by the amount owed the U.S. Government. Offsets to payments made pursuant to this section do not deprive the participant of any rights to contest the indebtedness. When offsets are made by the Treasury Department against payment, payment records reflect full payment to the participant. The Treasury Department will not notify NRCS of any offset, but NRCS or FPAC BC staff can ask the NFC payments branch to determine if an offset was applied to a payment.

G. Handling of Small Debts

(1) Debts Less than $25

(i) NRCS must record all debts; however, NRCS may cancel debts of less than $25 under any of the following situations, unless otherwise specified by legislation or program policy:

- The producer is deceased, incompetent, or cannot be located.
- The cost of further collection efforts, including the costs incurred to obtain the facts establishing liability or the costs to establish or locate the liable party, will exceed the amount recovered.
- There is no possibility of imminent collection.

(ii) A memorandum of justification is not needed, and this policy applies if the debt is the initial amount or the balance of a reduced debt.

(2) Exceptions

NRCS must not cancel debts of less than $25 under any of the following situations:

- There is evidence that the participant has violated civil or criminal fraud statutes.
- Program policy mandates that NRCS cannot write off small balances.
- Program operations would be adversely affected.
- Several small amounts involving the same facts or basis of liability can be included in a single billing or demand, if collection is imminent.
- It would not be in the best interests of USDA to cancel the debt.

(3) Accepting Voluntary Payments

A participant may voluntarily repay debts of any amount by submitting payment as instructed in the debt collection notice sent from NFC.

530.87 Unauthorized Commitments

A. An unauthorized commitment is a nonbinding agreement or contract made by an NRCS representative who lacked the authority to enter into that agreement or contract on behalf of the Federal Government or who failed to follow the proper obligation or modification process.

Example: The district conservationist informs a participant that they may proceed with installation and will receive a program payment for a practice not included in their approved contract.

B. NRCS employees must ensure they do not knowingly or inadvertently make verbal or written promises or agreements that purport to bind the Federal Government to unauthorized program payments. An employee who makes an unauthorized commitment may ultimately be held personally liable for any payments or actions related to the commitment.

C. Program provisions require that contract implementation and modifications conform to statute, regulation, and policy. NRCS may ratify unauthorized commitments associated with conservation program contracts through the equitable relief provisions found in 7 CFR Part 635.

Note: The agency has discretionary authority to take disciplinary action against an employee who makes an unauthorized commitment as part of a corrective action plan.

D. Processing Approved Ratifications.—Contracts that are ratified through approved equitable relief determinations will be processed as follows:

(1) Active contracts.—NRCS will follow the modification process in subpart G, "Contract Modifications," of this manual to add conservation practices or activities for approved ratifications on active contracts in which the participant has not yet completed the work.

(2) Expired, cancelled, or terminated contracts.—NRCS will fund conservation practices or activities with a new contract for approved ratifications in which the original contract is expired, cancelled, or terminated and the participant has not yet completed the work.

(3) NRCS will process payments following policy in subpart F, section 530.52H, "Special Payments," of this manual for approved ratifications on any contract in which the participant has already completed the work.

530.88 Equitable Relief, Appeals, and Mediation

A. NRCS must provide appeal rights for any adverse decision. Refer to subpart O, exhibit 530.143M, "Appeal Rights," of this manual.

B. Refer to the NRCS appeals regulation at 7 CFR Part 614 and the NRCS Equitable Relief regulation at 7 CFR Part 635. Appeals and mediation policy is found at 440-CPM-510, and in National Instruction 440-302, "Mediation Policy and Procedure." Equitable Relief policy is found at 440-CPM, Part 509, "Equitable Relief from Ineligibility for Conservation," and in NI 440-304, "Guidance for Processing Equitable Relief Cases for the Chief's Consideration."

Note: Submit ER requests for the Chief's consideration to the ER mailbox at equitablerelief@wdc.usda.gov.